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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1939.

No. 40

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF OF NATIONAL LIVE-STOCK MARKETING ASSOCIATION, INTERVENER.

LEE J. QUASEY,
Commerce Counsel for Intervener.

THE DUNLOP-WARREN PRINTING COMPANY, 218 WEST JACKSON, CHICAGO

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PRELIMINARY STATEMENT.

This brief is filed by the National Live Stock Marketing Association. The Association is a national organization composed of 21 producer owned and producer controlled cooperative live-stock marketing associations, with an aggregate membership of approximately 300,000 farmers and ranchers who are engaged in the production and feed-

ing of live stock. The member cooperative associations are broadly distributed over the country and have their central operating points on practically all the major public live-stock markets, including Chicago, Illinois. (R. 571.)

The Association by its nature is vitally interested in the welfare of the live stock industry and particularly in matters in connection with the transportation and marketing of live stock. The loading and unloading of live-stock shipments moving by rail from and to public live stock markets is declared by Congress (Section 15 (5)) to be a transportation service. The appellant is compensated for that service out of the line-haul charge which the shippers are required to pay. The service is an inseparable part of the transportation service and the shippers desire the Commission to retain its jurisdiction over the appellant in regard to that service.

STATEMENT OF FACTS AND STATUTES INVOLVED.

For the purpose of this brief intervener herein adopts the statements found in the brief for the United States with respect to the opinion of the District Court below, the decision of the Interstate Commerce Commission, the issues and statutes involved.

SUMMARY OF ARGUMENT.

I.

Appellant is subject to the jurisdiction of the Interstate Commerce Commission under the provisions of the Interstate Commerce Act and is not subject to the jurisdiction of the Secretary of Agriculture under the provisions of the Packers and Stockyards Act, 1921, with respect to the unloading and loading of live stock shipments by rail to and from the public stock yards at Chicago, Illinois.

Provisions of the Interstate Commerce Act and the Packers and Stockyards Act clearly show that Congress intended that the Commission should have exclusive jurisdiction over transportation services and charges and the Secretary to have exclusive jurisdiction over stock yard services and charges. Both the Commission and the Secretary have consistently given effect to this intent.

Transportation wholly by railroad does not end until the live stock is unloaded into suitable pens and stock yard services do not begin until the unloading service ends. (*Denver Union Stock Yards Company* v. *United States of America and the Secretary of Agriculture*, 304 U. S. 470, decided in 1938.)

II.

In its decision in 1912 this Court held the appellant to be a common carrier by railroad with respect to the loading and unloading services performed by it, and that service has not been effected in any manner by the 1922 lease which did not cover any of the facilities used by appellant in the loading and unloading of the live stock. Appellant did not ask the Commission to relieve it of its common carrier status in the lease proceedings and the

Commission did not do so. It was not until 11 years after the execution of the lease that the appellant first contended that the lease had relieved it of its status as a common carrier.

The contention was first advanced by appellant in *Atchison, T. & S. F. Ry. Co., et al.* v. *United States* (the Hygrade Case), 295 U. S. 193, and specifically overruled by this Court.

III.

Appellant is seeking to free itself from the jurisdiction of the Commission in order to make an increase in its charges for the loading and unloading services. Appellant made an unauthorized increase in its charge for these services prior to 1920, and as a direct result of that action, the live stock producers and shippers secured the enactment of Section 15 (5) as a part of the Transportation Act of 1920. The Commission has correctly found that the remedial purpose of that legislation would be defeated by release of appellant from the jurisdiction of the Commission.

ARGUMENT.

I.

APPELLANT IS SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT AND NOT SUBJECT TO THE PROVISIONS OF THE PACKERS AND STOCKYARDS ACT, 1921, WITH RESPECT TO THE UNLOADING AND LOADING OF LIVE STOCK SHIPMENTS BY RAIL.

Appellant urges in justification of the cancellation of its tariffs on file with the Interstate Commerce Commission with reference to the unloading and loading of live-stock shipments by rail at the Union Stock Yards, Chicago, that it is subject to the jurisdiction of the Secretary of Agriculture under the Packers and Stockyards Act.

While the Packers and Stockyards Act conferred powers upon the Secretary of Agriculture for the regulation of stockyard services, we wish to point out that Section 15 (5) of the Interstate Commerce Act, passed by Congress in 1920, provided that transportation wholly by railroad of ordinary live stock destined to public stock yards shall include, among other things, delivery at public stock yards of inbound shipments into suitable pens without extra charge therefor to the shipper.

Section 15 (5) of the Interstate Commerce Act provides:

> "Transportation wholly by railroad of ordinary live stock in carload lots destined to or received at public stock yards shall include all necessary service of unloading and reloading en route, delivery at public stock yards of inbound shipments into suitable pens and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with quarantine regulations."

The Commission in its report herein (R. 22) in commenting upon the circumstances and purposes of this section states as follows:

> "The enactment of this paragraph resulted from respondent's action in 1917 in increasing its unloading charge and the refusal of the line-haul carriers to absorb the increase, with the result that the additional charges imposed by respondent were collected from the consignees. The practices of carriers and stockyards of adding terminal charges to the scheduled railroad rates had been bitterly complained of by live-stock shippers, and prior to the enactment of the above paragraph Congress was fully informed of the status of public stockyards and the services which they performed. Senator Cummins, chairman of the interstate commerce committee, states that the purpose of the amendment was to require that the series of services rendered in connection with the transportation be performed for a single scheduled rate, and

> when the conference report on the bill in its final form was made, the House managers stated that the purpose of the amendment was to provide that the through rates in livestock should include unloading and other incidental charges. The legislative history of the paragraph indicates clearly the single purpose to give the Commission authority over services rendered and facilities used in the delivery of livestock at public stockyards."

Thus the services performed by the appellant in connection with the unloading and loading of rail shipments of live stock are included in "transportation wholly by railroad" under provisions of the Interstate Commerce Act.

This court held at the time of its first decision in *United States v. Union Stockyard & Transit Company of Chicago, et al.*, 226 U. S. 286 (1912) that the services performed and facilities furnished by the appellant were an inseparable part of the railroad transportation.

Section 15 (5) of the Interstate Commerce Act providing that the unloading and loading of rail shipments of live stock be performed by the carriers without additional charge was passed in 1920. The Packers and Stockyards Act, 1921, passed about a year later, which conferred certain powers upon the Secretary of Agriculture with respect to "stockyard owners" and "stockyard services," provides as follows:

> "Sec. 406. (a) Nothing in this Act shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission."

In view of the plain terms of Sec. 406 there is no room for the contention that the Packers and Stockyards Act gives the Secretary jurisdiction over loading and unloading services. The Interstate Commerce Commission had been exercising jurisdiction over the appellant with respect to loading and unloading of live-stock shipments by rail

pursuant to the decision of this court in 1912, for about nine years prior to the time the Packers and Stockyards Act was passed, and enactment of Sec. 15 (5) came only about a year prior to passage of the Packers and Stockyards Act.

Therefore, the provisions in Section 406 of the Packers and Stockyards Act must be considered as applicable to the jurisdiction vested in the Commission at the time it was passed.

As shown by the express provisions of the Packers and Stockyards Act, Congress intended that the jurisdiction of the Secretary of Agriculture, under the Act, should not overlap or affect the power or jurisdiction of the Interstate Commerce Commission. The action of the Secretary in proceedings concerning public stock yards has consistently adhered to this limitation, and there has never been a case where there has been any conflict over the limit of jurisdiction between the Interstate Commerce Commission on the one hand and the Secretary of Agriculture on the other. This position by the Secretary was approved by this court in *Denver Union Stockyards Company* v. *United States of America and the Secretary of Agriculture*, 304 U. S. 470, decided May 31, 1938. This was a proceeding initiated by the Secretary in which after extended investigation, taking of much evidence and full hearing, the Secretary issued an order establishing a rate base and prescribed maximum rates to be charged by the Denver Union Stockyards Co. for stockyard services rendered by it. The stock yard company filed a bill to set aside the order of the Secretary. This Court sustained the order of the District Court dismissing the bill stating in part as follows:

> "Appellant's activities are not confined to services covered by the order. It unloads and loads live stock from and into cars of railroads serving the yard, and receives from the carriers compensation not regulated by the Secretary."

From this it appears that the situation in that case is very similar to the situation of the appellant herein. The statement of the court with respect to trackage and unloading facilities is particularly significant where in upholding the Secretary in the exclusion of such facilities on the grounds that they were not used for performance of any stock yard service, the court said:

> "The Secretary appraised that property at $177,108. He excluded it as not used for performance of any stockyard service. Appellant leases the trackage to railroad carriers for substantial rentals. It does not claim that exclusion of that part of the item is confiscatory and fails to show it prejudicial. It follows that the court did not err in upholding the Secretary's determination. The unloading and loading facilities include ways between docks and the pens where the stockyard services are rendered. Appellant uses these facilities to unload and load live stock. That is a service for which the carriers pay appellant. Stockyard services do not commence until unloading ends; they end when loading begins. See *Atchison, T. & S. F. R. Co.* v. *United States*, 295 U. S. 193, 79 L. ed. 1382, 1387, 55 S. Ct. 748. The court rightly refused to disturb the Secretary's ruling as to these facilities."

This decision again establishes that stockyard services over which the Secretary has jurisdiction under the Packers and Stockyards Act do not commence until unloading ends and they end when the loading begins. In view of the decision of the court in the Denver case it follows that the decision of the Commission here must likewise be upheld because under it the Commission would exercise jurisdiction only to the point where transportation ends, as was originally held by this court in *Covington Stock Yards Co.* v. *Keith*, 139 U. S. 134, decided in 1891, and again in *A. T. & S. F. Ry. Co.* v. *U. S.*, 295 U. S. 193, where the court at page 201 stated:

> "Usage and physical conditions combined definitely to end transportation, at least in respect of these shipments, with unloading into suitable pens as is now re-

quired by Sec. 15 (5). Like the railroads, public stockyards are public utilities subject to regulation in respect of services and charges. The statutes cited clearly disclose intention that jurisdiction of the Secretary shall not overlap that of the Commission. The boundary is the place where transportation ends."

From this it is clear that the Interstate Commerce Commission has jurisdiction over the unloading and loading of live stock at public live-stock markets, that its jurisdiction does not end until the live stock is unloaded into suitable pens and that of the Secretary does not begin until the unloading ends.

Therefore, the Interstate Commerce Commission properly held that its jurisdiction over appellant's charges to the place where transportation ends was not taken away by the enactment of the Packers and Stockyards Act, 1921.

II.

THE LEASE ENTERED INTO BY APPELLANT IN 1922, WITH RESPECT TO CERTAIN OF ITS RAILROAD PROPERTY, DID NOT AFFECT EITHER THE FACILITIES OR SERVICES IN CONNECTION WITH THE LOADING AND UNLOADING OF RAIL SHIPMENTS OF LIVE STOCK AT ITS STOCK YARDS.

Appellant contends that it is not now and has not been since 1922 a common carrier subject to the Interstate Commerce Act, that at that time it joined in a lease in which the Chicago Junction Railway subleased the railroad properties held by it under a lease from the appellant to the Chicago River and Indiana Railway Company for a period of 99 years and thereafter, at the option of the lessee in perpetuity, the said lease providing for an annual rental of $2,000,000. This was authorized subject to certain conditions in *Chicago Junction Case*, (71 I. C. C. 631; 150 I. C. C. 32.)

The appellant was organized in 1865 as the Union Stock Yard & Transit Company under a special charter from the State of Illinois, which granted to it the power to build, own and operate a railroad and a stock yard, and the power of eminent domain.

The charter provided, among other things, that the company—

> "Shall construct a railway, with one or more tracks as may be expedient, from the grounds which may be selected for its said yards, so as to connect, outside the City of Chicago, the same with the tracks of all railroads which terminate in Chicago * * * and to make connections with such suitable sidetracks, switches and connections as to enable all the trains running upon said railroads easily and conveniently to approach the grounds selected for said yards, and may make such arrangements or contracts with such railroad companies, or either of them, for the use of any part or portion of the track or tracks * * * for the purposes aforesaid * * *." (*Live Stock, Loaded and Unloaded at Chicago*, 213 I. C. C. 330, 331.)

Pursuant to the exercise of its charter power the appellant acquired real estate, constructed a public stock yard and approximately 300 miles of railroad track connecting with trunk lines entering Chicago.

It is to be observed that it was not until after a lapse of 11 years following the making of the 1922 lease that the appellant raised the contention that it was no longer a common carrier by virtue of the said lease.

In 1923 appellant filed schedules with the Interstate Commerce Commission proposing to increase its charges for loading and unloading double deck cars of ordinary live stock from $1.00 to $2.00. The schedules were suspended by the Commission and in the subsequent proceeding the Commission found that the proposed increased charges had not been justified. (*Loading and Unloading Live Stock at Chicago, Illinois*, 83 I. C. C. 248.) Later appellant filed a supplement to its tariff proposing to in-

crease the charge to $1.25, which was not protested and became effective December 14, 1934. (*Live Stock Loaded and Unloaded at Chicago*, 213 I. C. C. 330.) It was not until 1933 when the so-called Hygrade Case, *Supra* (*A. T. & S. F. Ry.* v. *United States*, 295 U. S. 193), came before the Commission, that the appellant contended for the first time, before the Commission and the Court, precisely as it does here, that the effect of the 1922 lease was to divest it of its status as a common carrier. This court overruled that contention (295 U. S. 193, 201).

Section 1 (3) of the Interstate Commerce Act defines the terms "railroad" and "transportation" as follows:

> "The term 'railroad' as used in this Act shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property.
>
> "The term 'transportation' as used in this chapter shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

The services of loading and unloading live stock by appellant are therefore, terminal services with respect to this traffic and are just as indispensable to a complete transportation service by railroad as the movement of the cars of live stock to the unloading chutes. The handling of the live stock by appellant is the same today as it has always

been. The line-haul carriers bring the live stock to the unloading docks of the appellant by use of their own power and the appellant does the unloading today exactly as it has always done.

In its report herein the Commission makes the following finding:

> "These services consisted and consist today of the unloading of live stock from railroad cars into unloading pens located on respondent's property and of the loading of live stock from loading pens into railroad cars. Such services have always been performed by respondent's employees, and under respondent's rules the service cannot be performed by persons who are not employed by respondent. The live stock is now, and, except for a period early in respondent's history, always has been, hauled by the trunk lines to the platforms where respondent furnishes the services and facilities to complete the transportation.
>
> "The unloading and loading of live stock at respondent's yards and the furnishing of the facilities is an inseparable part of the interstate railroad transportation. Respondent not only holds itself out to perform this service at the Union Stock Yards, but demands that the service be performed by none other than itself. Through custom and usage respondent's yards have become for all practical purposes the sole terminal in Chicago for the receipt of the major portion of live stock reaching that point by rail, and respondent by reason of its practices has held itself out as ready to perform part of the interstate transportation necessary to effect delivery. Having attained this status, and thereby having rendered impracticable the construction and maintenance of separate live stock terminals by the individual railroads reaching Chicago, it cannot now escape the obligations imposed by law merely because it has leased the performance of some of its common-carrier functions to another corporation." (R. 34, 36.)

The status of appellant as a common carrier subject to the Act has been determined by this Court and the Commission in the following cases:

> "*United States* v. *Union Stock Yard & T. Co. of Chicago*, 226 U. S. 286;

Adams v. *Mills*, 286 U. S. 397;
Atchison, T. & S. F. Ry. Co. v. *United States*, 295 U. S. 193;
Live Stock Loading and Unloading Charges, 52 I. C. C. 209, 58 I. C. C. 164;
Live Stock Loading and Unloading Charges, 61 I. C. C. 223;
Loading and Unloading Live Stock at Chicago, 83 I. C. C. 248;
Livestock Loaded and Unloaded at Chicago, 213 I. C. C. 330;
Livestock to or From Union Stock Yards, Chicago, 222 I. C. C. 765."

Therefore the appellant is a common carrier subject to the Interstate Commerce Act, and the lease entered into by appellant in no way affected the manner of handling of the livestock by appellant and does not, we believe, affect the status of the yard company with respect to that service or deprive the Commission of jurisdiction which it has exercised continuously since the decision of this court in 226 U. S. 286, *supra*, decided in 1912.

III.

RELEASE OF APPELLANT FROM THE JURISDICTION OF THE COMMISSION WOULD DEFEAT THE REMEDIAL PURPOSE OF SECTION 15 (5) OF THE INTERSTATE COMMERCE ACT.

The Commission correctly states in its report that to release the appellant from the jurisdiction of the Commission would defeat the remedial purpose of paragraph 5 of Section 15 of the Act. That provision of the law was enacted by Congress as a part of the Transportation Act of 1920, primarily in response to urgent requests of associations of live-stock producers and shippers. The American National Live Stock Association, the National Wool

Growers' Association, the Texas Southwestern Cattle Raisers' Association, and the National Live Stock Marketing Association intervened in this proceeding before the Commission in opposition to the appellant's efforts to relieve itself from jurisdiction of the Commission and in so doing to defeat the remedial purpose of Section 15 (5) of the Act.

In the report here before the Court the Commission states:

> "The enactment of this paragraph (Sec. 15(5)) resulted from respondent's action in 1917 in increasing its unloading charge and the refusal of the line-haul carriers to absorb the increase, with the result that the additional charges imposed by respondent were collected from the consignees. The practices of carriers and stockyards of adding terminal charges to the scheduled railroad rates had been bitterly complained of by livestock shippers, and prior to the enactment of the above paragraph Congress was fully informed of the status of public stockyards and the services which they performed. Senator Cummins, Chairman of the Interstate Commerce Committee, stated that the purpose of the amendment was to require that the series of services rendered in connection with the transportation be performed for a single scheduled rate, and when the conference report on the bill in its final form was made, the House managers stated that the purpose of the amendment was to provide that the through rates on livestock should include unloading and other incidental charges. The legislative history of the paragraph indicates clearly the single purpose to give the Commission authority over services rendered and facilities used in the delivery of livestock at public stockyards." (R. 37).
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> • • • • •
>
> "Since respondent performs the service as common carriage, there is no reason, from a legal standpoint, why, as so performed, Congress' declaration that it is part of the railroad transportation should not still be given effect. There is a great deal of reason for so doing from the standpoint of giving full effect to the remedial purpose of section 15(5)." (R. 38).

Appellant's purpose is to release itself from the Commission's jurisdiction, and then to establish a higher charge for the transportation services which it performs. (R. 311). Appellant followed a very similar course of action in 1917 and the enactment of paragraph (5) of Section 15 was secured by the shippers for the very purpose of dealing with the situation so created. So history repeats itself.

The appellant filed its tariff with the Commission as required by the Supreme Court in 1913. In 1917 it filed an amended tariff to increase its charge for the delivery service from 25 to 50 cents. The Commission suspended the tariff and conducted a hearing in the matter and the shippers appeared at that hearing in opposition to the proposed increase. *Livestock Loading and Unloading Charges*, 52 I. C. C. 209. To circumvent the suspension of the proposed increase the appellant then took action to make the increase effective without the necessity of justifying it before the Commission. Its method of accomplishing this was to file a notice cancelling its tariffs, exactly the course which it has again followed here about twenty years later. Furthermore, then, exactly as now, the appellant contended that it had divested itself of its common carrier status by a change which had been made in its lease of various facilities, other than those employed in the loading and unloading service.

The Commission's power to suspend a tariff publication was then and is now limited to seven months, and its suspension of appellant's cancellation notice expired during the course of the investigation into the proposed increase, with the result that the appellant accomplished the withdrawal of its tariff from the Commission's files and taking advantage of that fact and without tariff authority collected from the shippers an additional charge of 25 cents a car on each of the thousands of cars of

livestock loaded and unloaded by it. It did that in defiance of the decision of this Court in *United States* v. *Union Stock Yard and Transit Company, supra,* 226 U. S. 286. The shippers were then before the Commission seeking to obtain an award of reparation for the amount thus collected, but the Commission had not yet made its award of reparation, which it did later in *Livestock Loaded and Unloaded,* 58 I. C. C. 164, July 15, 1920. The litigation which finally culminated in the decision of this court in *Adams* v. *Mills,* 286 U. S. 397, (1932), condemning the action of the appellant, still had twelve years to run. This Court had already held appellant to be subject to the Interstate Commerce Act under the terms of Section 1 and later it reaffirmed that holding. Nevertheless, the shippers had been forced to pay appellant large sums not authorized by the Commission.

With a view to meeting this situation by legislation as well as by action in the courts under the existing law, the national live stock associations and other live stock interests appeared before the Congress and urged the adoption of the amendment which was enacted as paragraph 5 of Section 15 of the Interstate Commerce Act.

As the Commission has found, the purpose of that legislation would be defeated by removing the appellant's charge for the unloading and loading service from the control of the Commission. That the necessary unloading and loading services, performed by the appellant, are an integral part of the railroad transportation and the charge for these services is one of the elements of expense which is reflected in the measure of the line-haul rate assessed against the shippers. The report of the Commission correctly states:

> "The fact that the railroads must proffer the (loading and unloading) service as a part of their interstate railroad transportation, absorbing any

charge exacted therefor, is inescapable. If respondent doubles its present charge of $1.25, it must still be absorbed. Either the railroads must bear the increase or pass it on to the shippers in an increased through rate.' (R. 38).

So long as the Commission has jurisdiction over the appellant, the amount assessed against the shippers for the loading and unloading services will be no more than reasonable. This is the very protection which the explicit terms of Section 15(5) were intended to guarantee. On the other hand it would reverse the decision of this Court holding appellant to be a common carrier under Section 1 of the Act, to permit it again to withdraw its tariffs, and again to use its monopoly of these services and its possession of the live stock to impose a charge of its own choosing, free from the control of the Commission, exactly as it did in 1917, and would nullify the purpose of Section 15(5) which was directed at the very evil with which the shippers are again confronted.

The Commission is right that if the remedial purpose of the Congress is to be given effect, the Commission must control appellant's charges for the loading and unloading services which are an inseparable part of "transportation by railroad" within the provisions of the Interstate Commerce Act.

Wherefore it is urged that the decision below in which the District Court dismissed the appellant's bill of complaint should be affirmed.

Respectfully submitted,

LEE J. QUASEY,
Commerce Counsel for Intervener.

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SUPREME COURT OF THE UNITED STATES.

No. 40.—October Term, 1939.

The Union Stock Yard and Transit Company of Chicago, Appellant, vs. The United States of America, Interstate Commerce Commission, et al. } Appeal from the District Court of the United States for the Northern District of Illinois.

[December 4, 1939.]

Mr. Justice Stone delivered the opinion of the Court.

The principal question for decision upon this appeal is whether, in the services performed by appellant in loading and unloading livestock at its stockyards in Chicago, and specified by its tariffs filed with the Interstate Commerce Commission, it is a common carrier subject to the Interstate Commerce Act, 24 Stat. 379, as amended in 1920, 41 Stat. 474, 49 U. S. C., §§ 1-27.

The case comes here on appeal from the final decree of a district court of three judges,[1] dismissing appellant's suit to set aside an order of the Interstate Commerce Commission, which directed the cancellation of appellant's supplemental schedule proposing cancellation of its rate schedules previously filed with the Commission. *Cancellation of Livestock Services*, 227 I. C. C. 710. Appellant here, as below, assails the Commission's order on the ground that in performing the scheduled services appellant is not within the jurisdiction of the Commission as defined by the Interstate Commerce Act.

As appears in the Commission's report, appellant was incorporated in 1865 with authority to build and operate a railroad and a stockyard, and with power of eminent domain. Acting under its charter it constructed a stockyard in Chicago and approximately three hundred miles of railroad tracks, consisting of a main line connecting with the trunk lines entering Chicago and switches to various industries located adjacent to its tracks.

Prior to 1912 it had tried various methods of operating its tracks and stockyards. At that time it did not control any of its railroad

[1] §§ 210 and 238(4) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 983, 28 U. S. C., §§ 47a, 345.

properties other than platforms and facilities for loading and unloading at its yard. The Chicago Junction Railway Co., which, with appellant, was controlled by a single holding company, operated the railroad under a fifty-year lease, paying to appellant as rental two-thirds of its net profits. In that year the United States brought suit to restrain appellant and the Junction Company from further operations in interstate commerce until they filed tariffs as required by § 6 of the Interstate Commerce Act. The litigation resulted in the decision of this Court that both were common carriers subject to the Act. *United States* v. *Union Stock Yards and Transit Co.*, 226 U. S. 286. Appellant then filed a rate schedule with the Commission specifying its charges for loading and unloading all rail-borne livestock, and continued its practice of performing services in loading and unloading from and to its livestock pens for the trunk line railroads, charging them the scheduled rates for the service.

In the following year the Junction Company lease was cancelled and a new one executed, under which appellant leased in perpetuity all of its railroad facilities, except those used for loading and unloading livestock, at an annual rental of $600,000 in lieu of a share of the profits. This was followed in 1917 by an attempt by the stockyard to charge shippers an additional amount for the loading and unloading service which resulted in a reparation award by the Commission, sustained in *Adams* v. *Mills*, 286 U. S. 397. In the same year appellant sought to cancel its tariffs on the ground that by reason of the change in the lease it was no longer a common carrier. This contention was rejected by the Commission. *Livestock Loading and Unloading Charges*, 52 I. C. C. 209; 58 I. C. C. 164.

In 1922 the Junction Company, with the approval of the Commission, *Chicago Junction Case*, 71 I. C. C. 631, 150 I. C. C. 32, sublet the road for ninety-nine years, with a renewal option, to the Chicago River & Indiana Railroad Co., whose capital stock was acquired by the New York Central Railroad Company. A renewed attempt by the stockyard to cancel its tariffs failed in 1935. 213 I. C. C. 330 and its 1937 repetition resulted in the like order of the Commission, which is the subject of the present suit.

By ceasing to operate or control its railroad directly or indirectly appellant has restricted its transportation service to the loading or unloading of livestock as specified in its tariff. It owns the platforms and chutes which are the necessary and only means of loading and unloading at its yard to and from which the livestock is shipped

interstate by rail. For this service it charges the railroads the scheduled rates. Loading and unloading are included in the transportation service rendered by the railroads to shippers, the charge for it to shippers being covered by the line-haul tariffs. The Commission found that appellant's yard is the principal railroad terminal in Chicago for the receipt of livestock in carload lots, and that appellant holds itself out to the public as performing the loading and unloading service and permits it to be performed by no other.

Appellant contends that having divested itself of all control and participation in the operation of its railroad it is no longer within the jurisdiction of the Commission over "common carriers by railroad", conferred by the Interstate Commerce Act, but is subject to regulation by the Secretary of Agriculture, under the Packers and Stockyards Act of 1921, 42 Stat. 159, 7 U. S. C., §§ 181-229.

By § 305 of that Act rates and charges for stockyard services furnished at a stockyard or by a stockyard owner are required to be just and reasonable. And by §§ 309, 310, the Secretary is given authority to regulate such rates. By § 301 stockyard services are defined as "services or facilities furnished at a stockyard in connection with the receiving, buying or selling . . . . marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock". It will be noted that the loading and unloading of livestock are not specifically included in the definition of stockyard services. Further, an important exception to the broad authority of the Secretary is made by § 406, which provides: "Nothing in this chapter shall affect the power or the jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission". We accordingly turn to the provisions of the Interstate Commerce Act to determine the extent of the exception.

Section 6(1) of the Interstate Commerce Act provides that a common carrier subject to the provisions of the sections presently to be mentioned, where no joint rate is involved, shall file schedules of rates showing "the separately established rates . . . applied to the through transportation" and requires that the rate schedules shall "state separately all terminal charges . . . and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, affect or determine any part of the aggregate of such

aforesaid rates . . . or the value of the service rendered to the passenger, shipper, or consignee."

Section 1(1) of the Interstate Commerce Act declares: "The provisions of this part shall apply to common carriers engaged in (a) the transportation of passengers or property wholly by railroad . . . " Section 1(3) provides that the term railroad shall include ". . . all the road in use by any common carrier operating a railroad . . . all switches, spurs, tracks, terminals and terminal facilities of every kind used or necessary in the transportation . . . of . . . persons or property . . . including all freight depots, yards or grounds used or necessary in the transportation or delivery of any such property. It defines the term "transportation" as including "locomotives, cars, . . . and all instrumentalities and facilities of shipment or carriage irrespective of ownership, or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery elevation and transfer in transit . . . and handling of property transported". Section 15(5) provides, "Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service or unloading and reloading enroute, delivery at public stockyards of inbound shipments into suitable pens and receipt and loading at such yards of outbound shipments without extra charge therefor to the shipper, consignee or owner . . . "

Without the aid of these statutes the transportation of livestock by rail was held to begin with its delivery to the carrier for loading onto its cars, and to end only after unloading for delivery or tender to the consignee at the place of destination. *Covington Stock-Yards Co.* v. *Keith*, 139 U. S. 128, 136. The same rule has been repeatedly applied since the statute was adopted. *Erie R. Co.* v. *Shuart*, 250 U. S. 465, 468; *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 295 U. S. 193, 198 and cases cited; *Denver Stock Yards Company* v. *United States*, 304 U. S. 470; 2 Hutchison, Carriers, 3d ed. §510. Appellant is thus engaged in the performance of a railroad transportation service and provides railroad "terminal facilities" and services. It is a "carrier" engaged in "transportation of property wholly by railroad" as those terms are defined by the words of the statute.

That appellant's stockyard is a terminal of the line-haul carriers, and that it performs their railroad terminal services within the meaning of the Act was recognized in *Adams* v. *Mills*, *supra*, 409,

and also in *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States, supra.* There the Commission's order directing the discontinuance of appellant's yardage charge to consignees was set aside on the sole ground that the Commission's findings failed to show that the service for which the charge was made was any part of the loading or unloading services, or otherwise a service which the rail carrier was bound to furnish.

The statute, it is true, does not purport to say when one who is a railroad carrier because engaged in furnishing railroad terminal facilities and services, is to be deemed a "common carrier". But that question was put at rest in *United States* v. *Brooklyn Eastern District Terminal,* 249 U. S. 296. There a local terminal company rendering terminal services as the agent of numerous rail carriers, was held to be engaged in a public or common calling, and hence to be a common carrier within the meaning of the Hours of Service Act, 34 Stat. 1415, which is applicable to any common carrier by railroad engaged in interstate commerce. Cf. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498; *United States* v. *California,* 297 U. S. 175, 181; *United States* v. *Sioux City Stockyards Co.,* 162 Fed. 556.

It is not important, as appellant seems to think, that, as an incident to the service it renders to shippers and to the line-haul carriers, it acts as agent of the latter. The character of the service, in its relation to the public, determines whether the calling is a public one, and a common carrier does not cease to be such merely because in rendering service to the public it acts as the agent of another. *United States* v. *Brooklyn Eastern District Terminal, supra,* 307. Connecting common carriers frequently act in that capacity for each other without losing their status as such.

Nor is it of weight that the terminal service includes no rail-haul. See *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 498, or that operation and control of the terminal facilities are wholly separate from those of any railroad. *United States* v. *Brooklyn Eastern District Terminal, supra,* 305. It is enough that the loading and unloading are rail transportation services performed at a railroad terminal as a common or public calling by one who, in rendering it, engages in the transportation of property by railroad within the meaning of the Act.

Ellis v. *Interstate Commerce Commission,* 237 U. S. 434, on which appellant relies, does not hold otherwise. There the Commission sought a district court order to compel the examination of witnesses

in a proceeding, instituted by the Commission of its own motion, for the investigation of a corporation which leased refrigerator cars to shippers and railroads and maintained icing plants at which it iced the cars, the railroad paying for the icing service. There was no allegation or proof that the corporation was engaged in a common calling or held itself out as ready or willing to supply cars or services on reasonable request. In holding that the case was not an appropriate one for the relief sought because the company was not within the jurisdiction of the Commission, the Court said, p. 443: "It is true that the definition of transportation in § 1 of the Act includes such instrumentalities as the Armour car lines lets to the railroads, but the definition is a preliminary to the requirement that the carrier shall furnish them upon reasonable request, not that the owners and builders shall be regarded as carriers contrary to the truth".

This Court has since recognized that loading and unloading services such as are here involved are common carrier services placed under the authority of the Commission by the Interstate Commerce Act. *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States, supra; Denver Stock Yards Company* v. *United States, supra,* 477. And unless the restriction of § 406 of the Packers and Stockyards Act upon the authority of the Secretary of Agriculture in favor of that of the Commission refers to such services, the purpose of the section is not apparent. None other is suggested. See *Atchison, Topeka & Santa Fe Ry. Company* v. *United States, supra,* 199. As we think the statute plainly places appellant's loading and unloading facilities and services under the authority of the Commission, they are withdrawn from the jurisdiction of the Secretary of Agriculture by the terms of § 406 of the Packers and Stockyards Act,[2] and we find it unnecessary to consider the question, much

[2] If this were doubtful, doubt would be removed by the legislative history. S. 3944, 66th Congress, in providing a Federal Livestock Commission to regulate packers and stockyards did not contain such a saving clause. The House Committee on Agriculture proposed a substitute bill giving control of the stockyards to the Interstate Commerce Commission because "the Commission already has control over transportation of cattle, which does not end until they are unloaded at the yards. . . ." H. Rept. 1297, 66th Cong., 3rd Sess., p. 9.

In the 67th Congress the House Committee on Agriculture proposed the bill substantially in the form finally adopted as the Packers and Stockyards Act, containing the saving clause in favor of the Commerce Commission. The Chairman in introducing the bill in the House said: "It is proposed to give the Secretary of Agriculture jurisdiction over the packers, stockyards, commission men, traders, buyers, and sellers, and all activities connected with the slaughtering and marketing of livestock and live-stock products in interstate commerce;

argued at the Bar, whether the services could be more conveniently and advantageously regulated by the one administrative agency than by the other.

Appellant asks that the order be set aside for want of the "full hearing" by the Commission, required by § 15(7) of the Interstate Commerce Act. In the course of the hearings before the Commission appellant offered in a variety of ways to prove the conditions prevailing at stockyards other than appellant's, and that the Commission had not asserted jurisdiction over loading and unloading services performed at those yards. Appellant states that the evidence would have shown that there are one hundred and thirty-five other stockyards in the United States under regulation by the Secretary of Agriculture,[3] which perform loading and unloading services, for which the railroads pay, under conditions similar to those in the Chicago yard; that although, to the knowledge of the Commission, this has been the case for many years, it has not asserted its jurisdiction over any of these yards. This, it is argued, would have established a practical construction of the statute by the Commission, relevant and material to the inquiry because of the rule that a settled or uniform administrative construction of a doubtful statute is of weight in determining its meaning. *Boston & Maine Railroad* v. *Hooker*, 233 U. S. 97; *The Pocket Veto Case*, 279 U. S. 655, 688, 689; *Louisville & Nashville R. R. Company* v. *United States*, 282 U. S. 740. The exclusion of the proffered evidence by the Commission and its alleged failure to make a proper record of the offer, it is urged, have deprived the appellant of a full hearing.

We think the record adequately shows that the Commission excluded the offered proof as appellant has characterized it here, but we conclude that the Commission was free to reject it. The issue to be resolved in the present proceeding is whether the service rendered by appellant at its Chicago stockyard brought it within

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that is the Secretary shall have jurisdiction from the time the livestock is unloaded at the terminal yards and after it is out of the jurisdiction of the Interstate Commerce Commission. Up to the time of unloading the livestock the Interstate Commerce Commission has jurisdiction over the shipment, distribution, and ownership of stock, refrigerator cars, and other equipment, and transportation rates, including belt lines and terminal roads." Cong. Rec., Vol. 61, Part 2, p. 1800.

[3] The Secretary has not asserted jurisdiction over the loading and unloading service at public stockyards. Secretary of Agriculture v. Denver Union Stock Yard Co., Bureau of Animal Industry Docket No. 450, p. 10 (1937); see letter to Chairman of Senate Committee on Agriculture and Forestry, Hearings on S. 2129, 75th Cong., 1st Sess., p. 6.

the jurisdiction of the Commission. To this issue the practices by others at other yards is irrelevant and their bearing on the administrative construction of the statute in the present circumstances is, we think, too remote and indecisive to compel a burdensome inquiry into collateral issues.

The Commission has consistently ruled that appellant's loading and unloading services are within its jurisdiction under conditions which appear of record to have remained unchanged since 1922. Appellant is free, as it has been throughout, to show any ruling or action taken by the Commission involving an administrative construction of the statute, although it is plain that in the face of the present record such rulings could not establish a consistent acceptance by the Commission of the construction for which appellant contends. See *United States* v. *Chicago, North Shore & Milwaukee R. R. Co.*, 288 U. S. 1; cf. *Sanford's Estate* v. *Helvering*, No. 34, October Term, 1939, decided November 6, 1939. But mere inaction, through failure of the Commission to institute proceedings under § 15(7), is not an administrative ruling and does not imply decision as to the Commission's jurisdiction. If the failure to act in the case of yards other than the present one is to be taken as an administrative construction of the statute persuasive here, we would be forced to conclude that a jurisdiction which the statute has plainly conferred either on the Secretary or the Commission, has been lost, although, with respect to this appellant, jurisdiction has been consistently asserted by the Commission, while the Secretary has as consistently remained passive. There is a practical limit to which inquiry into collateral issues may be extended in pursuit of the trivial. We think that limit was reached here.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.